

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #8	CCRB Case #: 201602041	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/29/2015 4:30 AM	Location of Incident: In front of § 87(2)(b)	Precinct: 28	18 Mo. SOL 5/29/2017	EO SOL 5/29/2017	
Date/Time CV Reported Wed, 03/09/2016 1:20 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Wed, 03/09/2016 1:20 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Douglas Kautter	00000	935093	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Meister	12882	952001	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Douglas Kautter	Abuse: Lieutenant Douglas Kautter stopped § 87(2)(b)	§ 87(2)(b)
B.LT Douglas Kautter	Abuse: Lieutenant Douglas Kautter frisked § 87(2)(b)	§ 87(2)(b)
C.LT Douglas Kautter	Abuse: Lieutenant Douglas Kautter searched § 87(2)(b)	§ 87(2)(b)
D.LT Douglas Kautter	Discourtesy: Lieutenant Douglas Kautter spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.LT Douglas Kautter	Abuse: Lieutenant Douglas Kautter frisked § 87(2)(b)	§ 87(2)(b)

Case Summary

There is no video footage associated with this incident. At approximately 4:51 a.m. on November 29, 2015, § 87(2)(b) was standing outside the entrance of § 87(2)(b) in Manhattan, which is a NYCHA facility where he resides. As he waited for his sister, § 87(2)(b) two officers—identified through investigation as Lieutenant Douglas Kautter and Police Officer Matthew Meister of the 28th Precinct—approached. Lt. Kautter questioned him about his activities before frisking him for weapons (**Allegations A and B**). Amidst the frisk, Lt. Kautter allegedly inserted part of his hand into one of § 87(2)(b)'s pockets (**Allegation C**), though he did not remove any objects. § 87(2)(b) verbally protested the frisk by stating that he did not consent to such, allegedly prompting Lt. Kautter to state, “Shut the fuck up, you can’t tell me what to fucking do” (**Allegation D**). Amidst further conversation and protest from § 87(2)(b) Lt. Kautter allegedly also stated, “Shut the fuck up, you don’t know shit,” “I can do whatever the fuck I want,” and “I don’t give a fuck where you work,” (**subsumed within Allegation D**). § 87(2)(b) was asked for and provided identification, after which Lt. Kautter allegedly frisked him a second time (**Allegation E**), again without recovering any objects. The officers ultimately departed without arresting or summoning § 87(2)(b). § 87(2)(b) filed this complaint on March 9, 2016, over four months after the incident occurred. He stated that the delay was due to a busy work schedule and a need to explore his options as to how best handle the situation.

Mediation, Civil and Criminal Histories

- Because § 87(2)(b) refused to mediate, this case was investigated.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of June 2, 2016, no notice of claim has been filed with the City of New York related to this incident (see Board Review #2).

Civilian and Officer CCRB Histories

- Lt. Kautter has been a member of the NYPD for three years and has been a subject in one prior CCRB case involving one allegation, which was closed as complainant uncooperative (see Board Review #3). § 87(2)(g)
- This is the first CCRB complaint filed by § 87(2)(b) (see Board Review #4).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) described the officer who stopped, questioned, frisked, searched, and spoke discourteously to him as a uniformed white male in his late thirties or early forties who stood 5’9”, had short black hair, had a mole on his face, and was the passenger of the vehicle. He described the witness officer as a uniformed light-skinned Asian or Hispanic male in his thirties who stood 5’6” to 5’7”, had short black hair, and was the driver of the vehicle.

It is undisputed that the two officers who arrived and interacted with § 87(2)(b) were Lt. Kautter and PO Meister. It is also undisputed that PO Meister was the driver of the vehicle and that Lt. Kautter was the passenger. As both Lt. Kautter and PO Meister are white males, neither

In his CCRB statement (see Board Review #7), § 87(2)(b) acknowledged that at the time of the incident, he was wearing dark navy blue pants, black sneakers, a black vest, and a multicolored striped shirt. As reflected in the EVENT Report (see Board Review #8), it is

undisputed that after a 911 call of a male at § 87(2)(b) and § 87(2)(b) wearing all black and waving a gun in the air was transmitted over the radio, Lt. [REDACTED]

[illegible]

§ 87(2)(b) stated that while he was standing still outside of § 87(2)(b), where he resided, he was using his cell phone and waiting for his sister, § 87(2)(b) to arrive. § 87(2)(b)

§ 87(2)(b) denied that he was in possession of a gun or any other weapon, and acknowledged carrying only a wallet and keys in waist pockets, which did not create any visible bulges. § 87(2)(b)

that he told Lt. Kautter that he lived in the building and was waiting for his sister, as well as removed his keys and offered to open the door to prove it. § 87(2)(b) alleged that without answering, Lt. Kautter frisked § 87(2)(b) patting over and squeezing his vest pockets. It is undisputed that no gun was recovered from § 87(2)(b)

Lt. Kautter acknowledged that he approached § 87(2)(b) and questioned him, though he did not recall what he specifically asked. Lt. Kautter maintained that he did not recall what § 87(2)(b) was doing with his hands and did not recall him using a cell phone. Lt. Kautter stated that within thirty seconds of conversation, he frisked § 87(2)(b)'s entire body based solely on the fact that § 87(2)(b) matched the description provided over the radio and was in close spatial and temporal proximity to the reported incident location. Lt. Kautter stated that he did not see any visible indications that § 87(2)(b) was armed or in possession of a gun, nor did he see any bulges on his body. Lt. Kautter confirmed that he did not recall feeling any objects nor did he remove any objects from § 87(2)(b)'s person. Lt. Kautter stated that he did not believe PO Meister ever made physical contact with § 87(2)(b)

§ 87(2)(g) PO Meister stated (see Board Review #12) that when he observed § 87(2)(b) outside of the location, he was pacing back and forth over an eight to ten foot range. PO Meister maintained that this behavior indicated to him that § 87(2)(b) could have been casing the entrance to the building and waiting for someone to exit. PO Meister stated that he did not recall what § 87(2)(b) was doing with his hands when initially observed, but denied seeing him use a cell phone at any point. PO Meister maintained that he did not recall what statements he or Lt. Kautter made to § 87(2)(b) but that during the interaction, § 87(2)(b) repeatedly placed his hands in his pockets, which he perceived to be furtive movements that prompted both officers to tell him to remove them. PO Meister maintained that § 87(2)(b) was agitated and verbally combative, stating that he was waiting for someone, that he lived in the building, and that he had done nothing wrong. PO Meister further stated that while speaking, he observed a bulge on § 87(2)(b)'s front right pocket, though he was unable to identify what the item was based on its shape, which he did not describe in any detail. PO Meister maintained that given the bulge, § 87(2)(b)'s combativeness, his matching description, and presence at the reported incident location, he, not Lt. Kautter, frisked § 87(2)(b) after two minutes of conversation. PO Meister stated that the bulge was a hard object, so he asked § 87(2)(b) if he could remove it from the pocket. PO Meister claimed that § 87(2)(b) replied that if PO Meister wanted to check it, he should do so. Accordingly, PO Meister maintained that with § 87(2)(b)'s consent, he removed the object and discovered it to be a cell phone. PO Meister stated that he did not search any other pockets or remove any other objects from his body. PO Meister stated that he did not recall whether Lt. Kautter ever made any physical contact with § 87(2)(b)

When PO Meister was shown the stop and frisk report that he completed for this incident (see Board Review #13), he clarified that the furtive movements listed referred to § 87(2)(b) placing his hands in and out of his pockets. PO Meister further clarified that the actions indicative of engaging in violent crimes referred to the casing, which could have been intended to harm someone coming out of the building. PO Meister clarified that the violent crime suspected referred to the report of a male with a gun. However, when Lt. Kautter was shown a copy of the report, he denied that he had authorized it and pointed out that it had been signed by a sergeant and that he had never seen it. Accordingly, Lt. Kautter stated that he did not know to what the

furtive movements, actions indicative of casing, actions indicative of engaging in violent crimes, or violent crime suspected referred. Lt. Kautter similarly did not recall seeing a suspicious bulge or recall any cell phone being involved in this incident.

A report of possession of a gun, alone, without any urgency to act or indication of dangerous or criminal use or potential for such will not authorize a frisk or search unless information gained from a prior inquiry supports it. People v. La Pene, 49 A.D.2d 604 (1976) (see Board Review #14). Furthermore, even when officers encounter a suspect who matches a radio description, the presence of an undefined bulge in a pocket, unlike a waistband bulge or one in the shape of a gun, is considered innocuous and does not provide the basis for a frisk. People v. David B., 172 A.D.2d 828 (2nd Dept. 1991) (see Board Review #15).

§ 87(2)(g)

[REDACTED]

Allegation C—Abuse of Authority: Lieutenant Douglas Kautter searched § 87(2)(b)

In his initial written complaint (see Board Review #16), § 87(2)(b)'s attorney wrote that following the initial frisk, Lt. Kautter searched all of § 87(2)(b)'s pockets without recovering anything. However, during his CCRB statement, § 87(2)(b) stated that amidst the frisk, Lt. Kautter inserted part of his hand into his right pocket, though there was nothing inside of it and he consequently did not remove anything. § 87(2)(b) did not report any additional search.

Although Lt. Kautter acknowledged frisking § 87(2)(b) he stated that he did not recall ever entering any of the pockets. Lt. Kautter confirmed that he did not remove any objects from § 87(2)(b). As previously mentioned, PO Meister stated that he did not recall whether Lt. Kautter ever made any physical contact with § 87(2)(b).

§ 87(2)(g)

Allegation D—Discourtesy: Lieutenant Douglas Kautter spoke discourteously to § 87(2)(b)

Allegation E—Abuse of Authority: Lieutenant Douglas Kautter frisked § 87(2)(b)

§ 87(2)(b) stated that when Lt. Kautter frisked him, he protested by stating that he did not consent to being searched and that Lt. Kautter had no authority to do so. § 87(2)(b) alleged that Lt. Kautter responded by stating, “Shut the fuck up, you can’t tell me what to fucking do.” § 87(2)(b) alleged that when he subsequently declared such language to be inappropriate, Lt. Kautter replied, “Shut the fuck up, you don’t know shit” and “I can do whatever the fuck I want.” § 87(2)(b) further stated that following the frisk when he was asked for identification, he provided both his license as well as one of his business cards from § 87(2)(b), where he works. § 87(2)(b) alleged that when Lt. Kautter saw the business card, he stated “I don’t give a fuck where you work.” § 87(2)(b) further stated that after additional conversation, Lt. Kautter frisked him a second time before § 87(2)(b) arrived, though he again did not recover anything.

In her unsworn telephone statement, § 87(2)(b) maintained (see Board Review #17) that when she arrived at the scene, she observed § 87(2)(b) speaking to the officers, though she was unable to clearly distinguish the officers based on clear physical descriptions. She stated that § 87(2)(b) was crying and visibly upset and that it appeared as though one of the officers was about to put his hands on him, so she approached and stepped in between them. § 87(2)(b) maintained that one of the officers was cursing and speaking rudely to § 87(2)(b) though she was questioning another officer at the time and did not recall any specific statements apart from the use of the word “shit.” When specifically asked if she heard any officer use the word “fuck,” § 87(2)(b) stated that it was possible, but that she could not provide any further detail. When asked if she heard any officer state, “I don’t give a fuck where you work” or “shut the fuck up,” § 87(2)(b) stated that it was possible but that she could not definitively recall. § 87(2)(b) stated that she did not recall any officer making any physical contact with § 87(2)(b) in her presence apart from brushing against his shoulder. She clarified that she ultimately escorted § 87(2)(b) upstairs as the officers departed in their vehicle.

Lt. Kautter denied ever telling § 87(2)(b) to shut up or stop speaking, as well as denied stating, “Shut the fuck up, you can’t tell me what to fucking do,” “I can do whatever the fuck I want,” or “I don’t give a fuck where you work.” However, Lt. Kautter maintained that he did not recall stating, “You don’t know shit.” Lt. Kautter denied ever using any profanity while speaking to § 87(2)(b). Lt. Kautter similarly denied ever frisking § 87(2)(b) a second time or making any additional physical contact with him apart from the initial frisk.

Meanwhile, PO Meister stated that he did not recall Lt. Kautter ever telling § 87(2)(b) to stop talking and denied hearing him make any of the above statements or using any profanity while speaking to § 87(2)(b). PO Meister also stated that although he heard everything that was said at the time of the incident, he did not recall any of Lt. Kautter’s statements to § 87(2)(b). PO

[illegible]

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date